



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DEC 02 2011

Colonel Robert D. Peterson
District Engineer
U.S. Army Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701

Dear Colonel Peterson:

On November 7, 2011 the U.S. Environmental Protection Agency (EPA) provided comments in response to a September 21, 2011 Public Notice issued for Premium Mills Surface Mine No. 1 (WVDEP SMA No. S-4004-07) located near the town of Iaeger, in Mingo County, West Virginia. The November 7, 2011 letter referenced Part IV, paragraph 3(a), of the 1992 Clean Water Act (CWA) Section 404(q) Memorandum of Agreement (MOA) between EPA and the Department of the Army. Our November 7, 2011 letter and comments therein are incorporated by reference (copy enclosed).

The proposed project includes the direct placement of 2,094 cubic yards of fill material within 9,185 linear feet of jurisdictional streams in conjunction with the operation of a surface, contour, and auger/highwall coal mining project. One access road and one sediment control pond would temporarily impact 506 feet of stream channel during the life of the mine and during the reclamation phase. The mining and backfilling would permanently fill 1,737 linear feet of stream channel. Excavated material that cannot be backfilled to the mined area would be placed in one valley fill area. During valley fill construction, a rock underdrain system would permanently impact 6,942 feet of stream. No coal or coal waste would be placed within jurisdictional waters. The proposed project area consists of Panther Fork, Rocky Poplar Hollow, and an unnamed tributary (UNT) of Oak Branch which all flow into Longpole Creek, a direct tributary to Tug Fork. In addition, permanent impacts are proposed in the UNT of War Branch which flows into War Branch, a direct tributary to Tug Fork.

EPA noted that its November 7, 2011 comments were based on the September 21, 2011 Public Notice, the application, and supplemental documentation, and that EPA has not been provided an Environmental Information Document (EID) or a copy of the Conceptual Mitigation Plan. In our November 7 letter, EPA expressed concern, based on the information provided, that it was not clear that the least damaging practicable alternative had been documented, that the project could adversely affect downstream water quality and result in significant degradation of the aquatic ecosystem, that it was not clear that project impacts will be adequately monitored, and that it was not clear the described mitigation would ensure the replacement of lost stream functions. Our letter also identified the need for appropriate adaptive management strategies to be in place, and recommended that a cumulative effects analysis be conducted. EPA also



provided substantial technical comments on these and other topics. In addition, we indicated our desire to work with the Corps of Engineers and the applicant to address our concerns as additional documents (such as the EID) and other information were made available.

At this time, no additional documents or information have been provided to address the concerns described in our November 7 letter. Based on the limited information available for review, EPA continues to be concerned that this project may not comply with the CWA 404(b)(1) Guidelines, 40 C.F.R. Part 230, that form the substantive environmental criteria upon which Section 404 permit decisions are based. Accordingly, consistent with Part IV, paragraph 3(b), of the 1992 CWA 404(q) MOA between EPA and the Department of the Army, EPA believes that the project, as described in the information provided to EPA, will result in substantial and unacceptable impacts to aquatic resources of national importance. The significant nature of these impacts and the high quality of the aquatic resources that would be affected are set forth in greater detail in our November 7 letter and detailed technical comments. EPA believes there are opportunities to address these concerns. We look forward to working with your staff and the applicant to discuss and resolve these issues.

If you have any questions or concerns please do not hesitate to contact me or Mr. John R. Pomponio, Division Director, Environmental Assessment & Innovation Division, at 215-814-2702.

Sincerely,



Shawn M. Garvin
Regional Administrator

Enclosure

